

AMENDED IN SENATE JULY 19, 2004
AMENDED IN SENATE JUNE 30, 2004
AMENDED IN SENATE JUNE 14, 2004
AMENDED IN ASSEMBLY JANUARY 26, 2004
AMENDED IN ASSEMBLY JUNE 2, 2003
AMENDED IN ASSEMBLY APRIL 7, 2003
AMENDED IN ASSEMBLY MARCH 26, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 488

**Introduced by Assembly Members Parra and Spitzer
(Principal coauthor: Assembly Member Pacheco)**

**(Coauthors: Assembly Members Bermudez, Calderon,
Canciamilla, Chavez, Cohn, Correa, Diaz, Dutra, Firebaugh,
Frommer, Jerome Horton, Kehoe, Lieber, Longville, Matthews,
Montanez, Mullin, Nakano, Nunez, Reyes, Ridley-Thomas,
Salinas, Steinberg, Vargas, Wesson, and Wiggins)
(Coauthor: Senator Margett)**

February 14, 2003

An act to add Section 290.46 to the Penal Code, relating to sex offenders, *making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 488, as amended, Parra. Sex offenders.

Until January 1, 2007, existing law requires the Department of Justice to continually compile specified information categorized by community of residence and ZIP Code regarding any person required to register as a sex offender for a conviction for the commission or attempted commission of any specified sex offense. Existing law requires the Department of Justice to operate a “900” telephone number for the public to inquire whether a named individual is among those specified registrants. Existing law also requires the department to provide a CD-ROM or other electronic medium containing a specified portion of the compiled sex offender information to certain law enforcement agencies. These law enforcement agencies are required to make the CD-ROM or other electronic medium available for public viewing, as specified. Existing law makes unauthorized use of the CD-ROM or “900” telephone number information a misdemeanor, and requires that reports be made by the department concerning the “900” telephone number program.

This bill would require the Department of Justice, on or before July 1, 2005, to make specified information about certain sex offenders available to the public via the Internet and to update that information on an ongoing basis. This information would include all of the information currently available to the public via the CD-ROM, and would also include the home address of specified offenders. With regard to certain offenders whose residence addresses are to go on the Web site only under specified circumstances relating to their criminal histories, the department would be required to put that address information on the Web site on or before July 1, 2006. This bill would also provide that certain offenders with less serious sexual offense histories, as specified, may apply to the Department of Justice for exclusion from the Internet Web site. This bill would provide that such an individual would bear the burden of proving the facts that make him or her eligible for exclusion. This bill would require the department to make a reasonable effort to provide notice to affected sex offenders that the department is required to make information about him or her available to the public via an Internet Web site and that he or she may be eligible for exclusion from the Internet Web site, as specified.

The bill would also (1) provide that any person who uses information disclosed pursuant to the Internet Web site to commit a misdemeanor is punishable by a fine of not less than \$10,000, nor more than \$50,000, and that the use of that information to commit a felony is punishable by an additional 5-year term of imprisonment; (2) make it a misdemeanor



for a sex offender who is required to register to enter the Web site; (3) provide for civil liability for the misuse of Internet sex offender information; and (4) require the Department of Justice to submit to the Legislature an annual report on the Internet Web site.

This bill would also state the intent of the Legislature to maintain an accurate sex registration database and to assist local agencies to develop strategies to achieve that goal.

This bill would appropriate \$650,000 from the General Fund to the Department of Justice to implement this act.

Because this bill would create new crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would provide that it would take effect immediately as an urgency measure.

Vote: ~~majority~~ ^{2/3}. Appropriation: ~~no~~ yes. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 290.46 is added to the Penal Code, to
2 read:
3 290.46. (a) On or before the dates specified in this section,
4 the Department of Justice shall make available information
5 concerning persons who are required to register pursuant to
6 Section 290 to the public via an Internet Web site as specified in
7 this section. The department shall update the Web site on an
8 ongoing basis. All information identifying the victim by name,
9 birth date, address, or relationship to the registrant shall be
10 excluded from the Web site. The name or address of the person's
11 employer and the listed person's criminal history other than the
12 specific crimes for which the person is required to register shall not
13 be included on the Web site. The Web site shall be translated into
14 languages other than English as determined by the department.
15 (b) (1) On or before July 1, 2005, with respect to a person who
16 has been convicted of the commission or the attempted

1 commission of any of the offenses listed in this subdivision or the
2 statutory predecessors of any of these offenses, or any offense
3 which, if committed or attempted to be committed in this state,
4 would have been punishable as one or more of the offenses listed
5 in this subdivision, the Department of Justice shall make available
6 to the public via the Internet Web site his or her names and known
7 aliases, a photograph, a physical description, including gender and
8 race, date of birth, criminal history, the address at which the person
9 resides, and any other information that the Department of Justice
10 deems relevant, but not the information excluded pursuant to
11 subdivision (a).

12 (2) This subdivision shall apply to the following offenses:

13 (A) Subdivision (b) of Section 207.

14 (B) Subdivision (b) of Section 209, except kidnapping to
15 commit robbery.

16 (C) Paragraph (2) or (6) of subdivision (a) of Section 261.

17 (D) Section 264.1.

18 (E) Section 269.

19 (F) Subdivision (c) or (d) of Section 286.

20 (G) Subdivision (a), (b), or (c) of Section 288, provided that the
21 offense is a felony.

22 (H) Subdivision (c) or (d) of Section 288a.

23 (I) Section 288.5.

24 (J) Subdivision (a) or (j) of Section 289.

25 (3) This subdivision shall also apply to any person who has ever
26 been adjudicated a sexually violent predator as defined in Section
27 6600 of the Welfare and Institutions Code.

28 (c) (1) On or before July 1, 2005, with respect to a person who
29 has been convicted of the commission or the attempted
30 commission of any of the offenses listed in paragraph (2) or the
31 statutory predecessors of any of these offenses, or any offense
32 which, if committed or attempted to be committed in this state,
33 would have been punishable as one or more of the offenses listed
34 in this subdivision, the Department of Justice shall make available
35 to the public via the Internet Web site his or her names and known
36 aliases, a photograph, a physical description, including gender and
37 race, date of birth, criminal history, the community of residence
38 and ZIP Code in which the person resides, and any other
39 information that the Department of Justice deems relevant, but not
40 the information excluded pursuant to subdivision (a). However,

1 the address at which the person resides shall not be disclosed until
2 a determination is made that the person is, by virtue of his or her
3 additional prior or subsequent conviction of an offense listed in
4 paragraph (2) of subdivision (a) of Section 290, subject to this
5 subdivision. On or before July 1, 2006, the Department of Justice
6 shall determine whether any person convicted of an offense listed
7 in paragraph (2) also has one or more prior or subsequent
8 convictions of an offense listed in paragraph (2) of subdivision (a)
9 of Section 290, and, for those persons, the Department of Justice
10 shall make available to the public via the Internet Web site the
11 address at which the person resides.

12 (2) This subdivision shall apply to the following offenses,
13 provided that the person has one or more prior or subsequent
14 convictions of an offense listed in paragraph (2) of subdivision (a)
15 of Section 290:-

16 (A) Section 220, except assault to commit mayhem.

17 (B) Paragraph (1), (3), or (4) of subdivision (a) of Section 261.

18 (C) Paragraph (2) of subdivision (b), or subdivision (f), (g), or
19 (i), of Section 286.

20 (D) Paragraph (2) of subdivision (b), or subdivision (f), (g), or
21 (i), of Section 288a.

22 (E) Subdivision (b), (d), (e), or (i) of Section 289.

23 (d) (1) On or before July 1, 2005, with respect to a person who
24 has been convicted of the commission or the attempted
25 commission of any of the offenses listed in this subdivision or the
26 statutory predecessors of any of these offenses, or of any offense
27 which, if committed or attempted to be committed in this state,
28 would have been punishable as one or more of the offenses listed
29 in this subdivision, the Department of Justice shall make available
30 to the public via the Internet Web site his or her names and known
31 aliases, a photograph, a physical description, including gender and
32 race, date of birth, criminal history, the community of residence
33 and ZIP Code in which the person resides, and any other
34 information that the Department of Justice deems relevant, but not
35 the information excluded pursuant to subdivision (a) or the address
36 at which the person resides.

37 (2) This subdivision shall apply to the following offenses:

38 (A) Section 220, except assault to commit mayhem, with no
39 prior or subsequent conviction of an offense listed in paragraph (2)
40 of subdivision (a) of Section 290.

1 (B) Subdivision (a) of Section 243.4, provided that the offense
2 is a felony.

3 (C) Paragraph (1), (3), or (4) of subdivision (a) of Section 261,
4 with no prior or subsequent conviction of an offense listed in
5 paragraph (2) of subdivision (a) of Section 290.

6 (D) Section 266, provided that the offense is a felony.

7 (E) Section 266c, provided that the offense is a felony.

8 (F) Section 266j.

9 (G) Section 267.

10 (H) Paragraph (2) of subdivision (b), or subdivision (f), (g), or
11 (i), of Section 286, with no prior or subsequent conviction of an
12 offense listed in paragraph (2) of subdivision (a) of Section 290.

13 (I) Subdivision (c) of Section 288, provided that the offense is
14 a misdemeanor.

15 (J) Paragraph (2) of subdivision (b), or subdivision (f), (g), or
16 (i), of Section 288a, with no prior or subsequent conviction of an
17 offense listed in paragraph (2) of subdivision (a) of Section 290.

18 (K) Subdivision (b), (d), (e), or (i) of Section 289, with no prior
19 or subsequent conviction of an offense listed in paragraph (2) of
20 subdivision (a) of Section 290.

21 (L) Section 647.6.

22 (e) (1) If a person has been convicted of the commission or the
23 attempted commission of any of the offenses listed in this
24 subdivision or the statutory predecessors of any of these offenses,
25 or of any offense which, if committed or attempted to be
26 committed in this state, would have been punishable as one or
27 more of the offenses listed in this subdivision, and he or she has
28 been convicted of no other offense listed in subdivision (b), (c), or
29 (d) other than those listed in this subdivision, that person may file
30 an application for exclusion from the Internet Web site with the
31 Department of Justice. If the department determines that the
32 person meets the requirements of this subdivision, the department
33 shall grant the exclusion and no information concerning him or her
34 shall be made available via the Internet Web site described in this
35 section. He or she bears the burden of proving the facts that make
36 him or her eligible for exclusion from the Internet Web site.
37 However, a person who has filed for or been granted an exclusion
38 from the Internet Web site is not relieved of his or her duty to
39 register as a sex offender pursuant to Section 290 nor from any
40 otherwise applicable provision of law.

(2) This subdivision shall apply to the following offenses:

(A) A felony violation of subdivision (a) of Section 243.4.

(B) Section 647.6, provided the offense is a misdemeanor.

(C) An offense listed in subdivision (b), (c), or (d) if the offender is eligible for, granted, and successfully completes probation pursuant to Section 1203.066 of the Penal Code.

(f) The Department of Justice shall make a reasonable effort to provide notification to persons who have been convicted of the commission or attempted commission of an offense specified in subdivision (b), (c), or (d), that on or before July 1, 2005, the department is required to make information about him or her available to the public via an Internet Web site as specified in this section. The Department of Justice shall also make a reasonable effort to provide notice that he or she may be eligible for exclusion from the Internet Web site if he or she may have been convicted of an offense for which exclusion is available pursuant to subdivision (e).

(g) Notwithstanding Section 6254.5 of the Government Code, disclosure of information pursuant to this section is not a waiver of exemptions under Chapter 3.5 (commencing with Section 6250) of Title 1 of Division 7 of the Government Code and does not affect other statutory restrictions on disclosure in other situations.

(h) (1) Any person who uses information disclosed pursuant to the Internet Web site to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than ten thousand dollars (\$10,000) and not more than fifty thousand dollars (\$50,000).

(2) Any person who uses information disclosed pursuant to the Internet Web site to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison.

(i) Any person who is required to register pursuant to Section 290 who enters the Web site is punishable by a fine not exceeding one thousand dollars (\$1,000), imprisonment in a county jail for a period not to exceed six months, or by both that fine and imprisonment.

(j) (1) A person is authorized to use information disclosed pursuant to this section only to protect a person at risk.

(2) Except as authorized under paragraph (1) or any other provision of law, use of any information that is disclosed pursuant to this section for purposes relating to any of the following is prohibited:

(A) Health insurance.

(B) Insurance.

(C) Loans.

(D) Credit.

(E) Employment.

(F) Education, scholarships, or fellowships.

(G) Housing or accommodations.

(H) Benefits, privileges, or services provided by any business establishment.

(3) This section shall not affect authorized access to, or use of, information pursuant to, among other provisions, Sections 11105 and 11105.3, Section 8808 of the Family Code, Sections 777.5 and 14409.2 of the Financial Code, Sections 1522.01 and 1596.871 of the Health and Safety Code, and Section 432.7 of the Labor Code.

(4) (A) Any use of information disclosed pursuant to this section for purposes other than those provided by paragraph (1) or in violation of paragraph (2) shall make the user liable for the actual damages, and any amount that may be determined by a jury or a court sitting without a jury, not exceeding three times the amount of actual damage, and not less than two hundred fifty dollars (\$250), and attorney's fees, exemplary damages, or a civil penalty not exceeding twenty-five thousand dollars (\$25,000).

(B) Whenever there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of misuse of the information available via the Internet Web site in violation of paragraph (2), the Attorney General, any district attorney, or city attorney, or any person aggrieved by the misuse is authorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or group of persons responsible for the pattern or practice of misuse. The foregoing remedies shall be independent of any other remedies or procedures that may be available to an aggrieved party under other provisions of law, including Part 2 (commencing with Section 43) of Division 1 of the Civil Code.

1 (k) On or before July 1, 2006, and every year thereafter, the
2 Department of Justice shall make a report to the Legislature
3 concerning the operation of this section.

4 (l) The Department of Justice and its employees shall be
5 immune from liability for good faith conduct under this section.

6 SEC. 2. It is the intent of the Legislature that the Department
7 of Justice continue to maximize all available resources to ensure
8 the highest degree of accuracy in the sex registration database, and
9 that the department assist local agencies in developing strategies
10 to achieve that goal.

11 SEC. 3. *The sum of six hundred and fifty thousand dollars*
12 *(\$650,000) is hereby appropriated from the General Fund to the*
13 *Department of Justice for the purpose of implementing this act.*

14 SEC. 4. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 the only costs that may be incurred by a local agency or school
17 district will be incurred because this act creates a new crime or
18 infraction, eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section 17556 of
20 the Government Code, or changes the definition of a crime within
21 the meaning of Section 6 of Article XIII B of the California
22 Constitution.

23 SEC. 5. *This act is an urgency statute necessary for the*
24 *immediate preservation of the public peace, health, or safety*
25 *within the meaning of Article IV of the Constitution and shall go*
26 *into immediate effect. The facts constituting the necessity are:*

27 *In order to ensure that members of the public have adequate*
28 *information about the identities and locations of sex offenders who*
29 *may put them and their families at risk, it is necessary that this act*
30 *take effect immediately.*